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The information submitted states that Decedent died on Date. Decedent's will provides that all assets included in the residue of Decedent's estate shall be paid over to Trust. Trust provides that after two pecuniary bequests, the remaining undistributed Trust property shall be immediately distributed to Charity. Decedent also owned an individual retirement account (IRA) with Trust as the IRA's primary beneficiary.

Estate and Trust intend to assign and transfer the IRA to Charity in accordance with Article V of the Trust (the Proposed Transfer). A ruling is requested under § 691 that the Proposed Transfer will not be a transfer within the meaning of § 691(a)(2).

Section 691(a)(1) provides that the amount of all items of gross income in respect of a decedent (IRD) which are not properly includible in respect of the taxable period in which falls the date of the decedent's death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

Section 691(a)(2) provides that if a right, described in § 691(a)(1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term "transfer" includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

Section 1.691(a)-1(b) provides that the term "income in respect of a decedent" (IRD) refers to those amounts to which a decedent was entitled as gross income, but which were not properly includible in computing the decedent's taxable income for the taxable year ending with the date of the decedent's death or for a previous taxable year under the method of accounting employed by the decedent. Section 1.691(a)-1(c) provides that the term "income in respect of a decedent" also includes the amount of all items of gross income in respect of a prior decedent, if (1) the right to receive such amount was acquired by the decedent by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent and if (2) the amount of gross income in respect of the prior decedent was not properly includible in computing the decedent's taxable income for the taxable year ending with the date of his death or for a previous taxable year.

Section 1.691(a)-4(a) provides that in general, the transferor must include in his gross income for the taxable period in which the transfer occurs the amount of the consideration, if any, received for the right or the fair market value of the right at the time of the transfer, whichever is greater.

Section 1.691(a)-4(b) of the Income Tax Regulations provides that, if the estate of a decedent or any person transmits the right to IRD to another who would be required by § 691(a)(1) to include such income when received in his gross income, only the transferee will include such income when received in his gross income. In this situation, a transfer within the meaning of § 691(a)(2) has not occurred.

Section 1.691(a)-4(b)(2) provides that if a right to IRD is transferred by an estate to a specific or residuary legatee, only the specific or residuary legatee must include such income in gross income when received.

Rev. Rul. 92-47, 1992-1 C.B. 198, holds that a distribution to the beneficiary of a decedent's IRA that equals the amount of the balance in the IRA at the decedent's death, less any nondeductible contributions, is IRD under § 691(a)(1) that is includable in the gross income of the beneficiary for the tax year the distribution is received.

Rev. Rul. 78-406, 1978-2 C.B. 157, provides, in general, that the direct transfer of funds from one IRA trustee to another IRA trustee does not result in such funds being treated as paid or distributed to the participant and such transfer is not a rollover contribution. The revenue ruling states that this conclusion would apply whether the bank trustee initiates or the IRA participant directs the transfer of funds.

Rev. Rul. 78-406 is applicable to a trustee to trustee transfer directed by the beneficiary of an IRA after the death of the IRA owner as long as the transferee IRA is set up and maintained in the name of the deceased IRA owner for the benefit of the beneficiary. In that situation, the transfer does not constitute a payment or distribution as those terms are used in § 408(d).

Based solely on the facts and representations submitted, we conclude that Trust may retitle the name of the IRA to New Title and that such change will not constitute a payment or distribution out of the IRA to Estate, Trust, or Charity within the meaning of § 408(d), and will otherwise be a non-taxable transfer. Additionally, the Proposed Transfer will not be a transfer within the meaning of § 691(a)(2). Charity will include the amount of IRD of the IRA assigned and transferred to it in its gross income when the distributions from the IRA are actually received by Charity.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transaction described above under any other provisions of the Code.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, a copy of this letter is being sent to Estate's authorized representative.

Sincerely,

Bradford Poston  
Senior Counsel, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

cc: